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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

THIRD PERIODIC REPORTS OF STATES PARTIES DUE IN 1998

Addendum

YEMEN*

[Original: Arabic]
[report submitted on 13 July 2001]

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Report of the Republic of Yemen on the fulfilment of its obligations as a party to the International Covenant on Civil and Political Rights

1. In compliance with the International Covenant on Civil and Political Rights and pursuant to the legislative enactments and laws promulgated in the Republic of Yemen in connection with civil and political rights and with strengthening the measures adopted with a view to giving effect to those legislative enactments and laws, the Republic of Yemen hereby submits this report to the Human Rights Committee in accordance with article 40 of the Covenant.

2. It is now over 13 years since Yemen acceded to the Covenant. During that time, the Covenant has played a leading role in the continuing efforts to promote public awareness of human rights which, together with public freedoms, form the basis of democratic society. These characteristics are inherent in the Yemeni individual for, in his view, they are more than vital; they are the very essence and spirit of life. Yemenis are free to work, express opinions and ideas, own property, travel and have political affiliations. For them, freedom is both created and bestowed by God. The freedom of the individual derives from the freedom of the community; people have equal rights and duties and are equal before the law and in the eyes of the authorities.

3. It must be stressed that Yemen, in common with many countries of the world, would find it difficult to guarantee the full enjoyment of human rights without experiencing some problems - at the present time at least - since the laws and legislative enactments aimed at guaranteeing fundamental human rights are still in the process of being applied and implemented. Notwithstanding the political will to promote the enjoyment of human rights, Yemen encountered a variety of problems, including the political unrest which followed shortly after the achievement of unification and led to fighting orchestrated by a group who wanted to return Yemen to the era when it was divided into two parts with a view to achieving its retreat from democracy and reinstating the totalitarian system of that era. Despite the difficult situation which Yemen experienced in the summer of 1994 as a consequence of the war of secession, the central Government was able to safeguard human rights. It therefore set up no special tribunals. On the contrary, it declared a general amnesty for those responsible for causing the adverse conditions. Due respect was shown for fundamental human rights, which remained intact, and following the war, the progress of democracy continued and legislative elections were held as scheduled on 27 April 1997.

4. It is impossible to ignore the fact that the institutional structure in Yemen suffers from organizational and operational difficulties as a natural consequence of the burdensome legacy inherited from the totalitarian regime of the days prior to unification. In the field of human rights, the structure of the organs of the judiciary was problematic, as a result of which preparation of the judicial reform programme submitted as part of the Government programme of 1997, which is now being implemented, came to assume significance. The Republic of Yemen has obtained loans from a variety of donors in order to facilitate the implementation of this programme.

5. This report contains details of the current position in regard to implementation of the provisions of the International Covenant on Civil and Political Rights and reviews the legal developments which have taken place in Yemen with a view to achieving conformity with the

Covenant. It also reviews the practical steps taken in the field of implementation and indicates the difficulties which have prevented attainment of the quintessential objectives of the Covenant and the Yemeni laws consistent with it.

PART I

I. ARTICLE 1 OF THE COVENANT

Paragraph 1

6. The Republic of Yemen regards the principle of the right of peoples to self-determination as one of the key principles on which foreign policy is based. Not only does it believe in and support this right, but it has also constantly backed the call for its realization at the international level, a position which it continues to maintain. Moreover, it continually advocates respect for the sovereignty of States and the principle of non-interference in internal affairs, which, in its view, is a guarantee of the freedom of self-determination. The policy of Yemen persistently underlines this principle, which it endeavours to apply at the regional and international levels.

Paragraph 2

7. Yemen emphasizes and supports realization of the right freely to dispose of resources so that the people may enjoy the benefit of their national wealth, together with the development which ensues as a result. To that end, article 8 of the Constitution stipulates as follows: "All types of natural resources and sources of energy, whether under or above ground, in territorial waters, on the continental shelf or within the exclusive economic zone, are owned by the State, which shall ensure that they are exploited for the common good." Yemen affirms that mutual benefit should form the basis for dialogue and communication among peoples with a view to the achievement of their development. As a developing country with limited resources, Yemen believes that international cooperation should play a positive role in assisting the poor and developing States and that resources and assets should be channelled into development in order to spread prosperity worldwide and narrow the gap between the developing and developed countries with the aim of strengthening international stability and security.

Paragraph 3

8. Article 6 of the Yemeni Constitution stipulates: "The State affirms its adherence to the Charter of the United Nations, the Universal Declaration of Human Rights, the Pact of the League of Arab States and the generally recognized principles of international law." This means that the safeguarding of international peace and security is a way of guaranteeing the right of self-determination and that the enjoyment of national wealth is also a way of international cooperation based on justice and the achievement of prosperity for humankind.

II. ARTICLE 2 OF THE COVENANT

Paragraph 1

9. Article 41 of the Constitution stipulates that: "All citizens are equal in regard to their public rights and duties". Article 31 also stipulates that: "Women are the sisters of men. They have rights and duties which are guaranteed and required by the Sharia and stipulated by law." Article 5 of the Code of Criminal Procedure further stipulates that: "Citizens are equal before the law and an individual may not be punished or harmed on grounds of nationality, race, origin, language, belief, occupation, standard of education or social status." The facts confirm that this principle is respected and observed in practice under all circumstances.

Paragraph 2

10. The laws in force regulate all aspects of the system of judicial proceedings, three levels of which are specified under the Judicial Authority Act, while the Code of Criminal Procedure regulates the procedures and time-limits for the hearing of disputes and legal grievances. The law also requires the parties concerned to implement the orders, decisions and judgements handed down by the courts, as well as the measures needed to ensure compliance with those and other judgements with the aim of enabling the rightful party to receive his due.

Paragraph 3 (a) and (b)

11. In regard to the right of grievance, article 51 of the Constitution provides that: "Every citizen shall have the right of recourse to the courts in order to protect his legitimate rights and interests. He shall have the right to submit complaints, criticisms and proposals, directly or indirectly, to the organs and institutions of the State." At the practical level, grievances are heard by the competent high administrative authorities or by the varying levels of courts. The legislative authority also plays a part by discussing such grievances as are submitted to it in public hearings held during sessions of the House of Representatives at which citizens' affairs are discussed. The Government is invited to respond and provide clarification and to remedy genuine grievances. Article 48 of the Civil Code (Act No. 19 of 1992) stipulates that: "Any person who suffers an unlawful violation of one of his personal rights may seek an end to such violation, together with compensation for any damage suffered."

12. In regard to compliance with laws and the rendering of judgement in connection with legal provisions, article 8 of the Code of Civil Procedure (Act No. 28 of 1992) stipulates that: "In rendering his judgement, the judge shall comply with the laws in force and shall be required to apply the provisions thereof."

13. Article 8 of the Judicial Authority Act No. 1 of 1990 also stipulates that: "The courts are the judicial bodies which are competent to render judgement in regard to all disputes and offences."

Paragraph 3 (c)

14. Concerning enforcement, article 236 of the Code of Civil Procedure stipulates that: "Enforcement refers to orders, decisions and judgements handed down by the court, as well as any measures which it takes to enforce those and other judgements with a view to enabling the rightful party to receive his due." Judgements are generally enforced in the interest of complainants in whose favour the judgement was made. If the matter requires some consideration owing to structural difficulties which need improvement, the judicial reform programme assumes responsibility for dealing with any subject which has continued to prove difficult over a long period so that a move is made to establish special bodies that will enforce follow-up of judicial proceedings directly and constitute a guarantee that the rightful parties receive their dues.

III. ARTICLE 3 OF THE COVENANT

15. Article 31 of the Constitution establishes the status and position of women in society with the high and lofty notion that "women are the sisters of men". The Constitution thus guarantees the enjoyment by Yemeni women of all their political, economic, social and cultural rights, without distinction between them and men. The Constitution expresses this equality by using the word "citizen" in its general and all-embracing sense, which is understood to include both men and women, as illustrated in section 2, articles 41, 42, 43, 45, 48, 51, 54, 55, 56, 57, 58 and 61 of the Constitution under the heading "Basic Rights and Duties of Citizens".

16. Article 41 of the Constitution therefore stipulates that: "All citizens are equal in regard to their public rights and duties." Article 42 further stipulates that: "Every citizen shall have the right to participate in political, economic, social and cultural life ...". Other articles of the Constitution equally guarantee fundamental rights.

17. These constitutional principles have naturally had an obvious impact on legislative enactments, which endeavoured to establish women's rights and determine the role of women and their contribution to political, social, cultural and economic life alongside men, as outlined below.

18. The political participation of women can be illustrated by the role which they play in elections; the Electoral Act No. 27 of 1996, as amended, makes no distinction between men and women, according to each of them the right to vote, stand as a candidate and serve as a member of the House of Representatives (articles 3 and 51 of the Act). Furthermore, demonstrating an awareness of the considerable social obstacles which may prevent women's enjoyment of their constitutional and legal right in that connection, the Higher Electoral Committee is required under article 5 of the Act to take steps to encourage women to exercise their electoral rights and form women's committees to take charge of registering and recording the names of female voters on the electoral rolls and ascertaining their identity.

19. The table below shows the number of persons among the overall population of the Republic who were registered to vote in the 1993 and 1997 elections.

No. of persons registered to vote in the 1993 elections				No. of persons registered to vote in the 1997 elections			
Males	Per cent	Females	Per cent	Males	Per cent	Females	Per cent
2 209 944	82	478 790	18	3 364 786	73	1 272 073	27
Total: 2 688 734				Total: 4 636 786			

20. Women participated in two sets of elections to the House of Representatives. In the first set in 1993, 41 women stood as candidates and in 1997, there were 23 women candidates. Two women achieved success in each of the two sets of elections.

21. Women also took part in monitoring the impartiality of the elections; two women in the position of assistant secretary-general were leading members of the higher committee responsible for such monitoring. Women were additionally represented in the Monitoring Committee and also assisted international observers. The role of women was not merely confined to monitoring the elections; they have had both a presence and a conspicuous participatory role in political parties that turned them into a true political force that cannot be ignored. Leading government positions have also been successfully assumed by women.

22. Despite the many enormous efforts made by the Government to achieve the advancement of women and further their contribution and participation in the structure of society, various obstacles and difficulties still remain, all of which are attributable to social and cultural heritage and the economic standard. With increased support, such difficulties can be overcome.

23. The economic, social and economic participation of women parallels their political participation, with which it is synonymous. Women have an equal role with men in the positions which they have attained. In the field of culture, the contributions made by women to cultural associations and to a variety of cultural activities are clear. Women and young girls in particular are also specially catered for in the field of education and training, as they are admitted to educational establishments free of charge, the Government having taken a decision to exempt them from the nominal fees payable for education.

24. Women have likewise been able to participate in economic and social life on an equal footing with men, particularly in the fields of public service and self-employment.

IV. ARTICLE 4 OF THE COVENANT

Paragraph 1

25. In the Republic of Yemen, any state of emergency is declared by republican decree. The declaration must be presented to the House of Representatives within seven days of its issuance in accordance with article 121 of the Constitution. If the House of Representatives has been dissolved, the former House of Representatives is to be convened in accordance with the Constitution. If the House is not called upon to convene or if, in the event that it is convened, the declaration is not presented, the state of emergency ceases in accordance with the Constitution.

A state of emergency is declared only in circumstances of war, internal unrest or natural disaster and only for a limited period which may not be extended, except with the approval of the House of Representatives.

Paragraph 2

26. Under no circumstances does the declaration of a state of emergency prejudice citizens' freedoms or restrict fundamental human rights, as there are no legislative enactments in the Republic of Yemen that permit such rights to be undermined during a state of emergency.

Paragraph 3

27. One instance to be cited is the episode of fighting which took place during the summer of 1994 and which was fuelled by separatists with the aim of demolishing the pillars that unified the Yemeni homeland and creating feelings of insecurity and instability among citizens. The Yemeni Government was therefore obliged to declare a state of emergency, by means of Republican Decree No. 20 of 1994, for a period of 30 days, beginning on 5 May 1994. It then presented the Decree to the House of Representatives, which ratified it by Ordinance No. 4 of 1994 in accordance with the provisions of article 121 of the Constitution. As is well known, that state of emergency ended with elimination of the causes which led to it or, in other words, after the unrest and fighting sparked by the separatists had died down and after the military activities, demanded by the adverse conditions to which the Yemeni people were subjected, had drawn to a close. The exceptional situation denoted by the state of emergency, however, resulted in no violation of or prejudice to the freedoms and fundamental rights of citizens. Nor was that the end of the matter; on the contrary, a general amnesty was proclaimed for all those who took part in the unrest, which had a positive impact on reducing the extent of the fighting and caused the conspirators to lose their opportunity.

V. ARTICLE 5 OF THE COVENANT

Paragraph 1

28. The Republic of Yemen affirms that it interprets none of the provisions of the Covenant as implying any right to violate the rights recognized in the Covenant to a greater extent than the limitation provided for therein and that it does not seek to apply the Covenant in the narrowest sense. On the contrary, it liberally accords to the individual rights which are above and beyond those recognized in the Covenant, being an Islamic State which treats human beings in accordance with the expectations that the Islamic Sharia has of them. The Constitution and other laws also accord extensive rights to citizens. Yemen regards those rights recognized in the Covenant as complementing the substance of Yemeni legislative enactments.

Paragraph 2

29. Yemen also affirms its commitment to the Charter of the United Nations, the Pact of the League of Arab States, the Universal Declaration of Human Rights and the generally recognized principles of international law.

VI. ARTICLE 6 OF THE COVENANT

Paragraph 1

30. An individual is defined in article 230 of the Penal Code: "A newborn child is regarded as an individual, whether the blood circulation is continuous in all or part of his body and whether or not his umbilical cord has been cut. He is established to be alive when he starts to cry or sneezes or breathes or makes a movement that provides confirmation of life." The Government of the Republic of Yemen has endeavoured to guarantee this right through the reduction of child and maternal mortality rates. The mortality rate has noticeably fallen in recent years, a fall which has been linked to the priority afforded by the Yemeni Government to the provision of medical services for the family, particularly mothers and children. Several health awareness campaigns have been organized on the subject of seasonal epidemics (infectious diseases) and on a number of other diseases, such as poliomyelitis, the intention being that Yemen should soon become one of the countries free of this disease. These successive and ongoing campaigns are based on raising health awareness among the individuals of society through the written and audio-visual media.

31. To safeguard this right requires material resources which are beyond the capability of the Yemeni Government. It is, however, striving to achieve that aim with the available resources. The Constitution recognizes that each individual has an inherent lifelong right to life. Article 47 of the Constitution stipulates that: "Criminal liability is personal. There is no crime or punishment except as defined by a provision of the Sharia or the law. Every accused person is innocent until proved guilty by a final court judgement." Article 4 of the Code of Criminal Procedure (Act No. 13 of 1994) also stipulates that: "An accused person is innocent until proved guilty. The accused person shall be given the benefit of the doubt and no penalty shall be handed down until a trial has been conducted, in accordance with the provisions of this Act, in which the right of defence is safeguarded."

Paragraph 2

32. The death penalty is applied in Yemen within the strictest limits and in accordance with the provisions of the Islamic Sharia. The Code of Criminal Procedure in force guarantees that persons sentenced to this penalty enjoy various safeguards, including the right to request pardon. Before such sentences are carried out, they must be submitted to the president of the Republic, who uses his good offices with the prosecuting party with a view to commutation of the sentence. This penalty is applied in the case of premeditated murder, brigandry (murder during the course of highway robbery) and abduction with intent to kill.

Paragraph 3

33. It is firmly established that the legislative enactments of the Republic of Yemen, in particular Republican Decree No. 12 of 1994 (the Penal Code) categorically prohibit all forms of violation of the individual's right to life, including genocide. The perpetration of any violation in this connection leads to stringent penalties.

34. A few cases of enforced disappearance occurred during the events of 1986 in what was formerly known as the People's Democratic Republic of Yemen and were dealt with subsequently. The Republic of Yemen has cooperated with the Working Group on Enforced and Voluntary Disappearances of the Office of the United Nations High Commissioner for Human Rights in the examination of certain cases. Relatives of the disappeared persons were contacted and the Supreme National Committee for Human Rights published an announcement that anyone with a disappeared relative should report the case to the Committee so that the matter could be addressed.

35. The families of the victims of the events of 1986 receive financial assistance from the State. No disappearances have occurred since the two States merged their identity into the single State of the Republic of Yemen. Under Yemeni law, however, any person who disappears and remains missing for over five years is presumed dead and his family is entitled to divide his estate. His wife may also remarry.

Paragraph 4

36. Any person sentenced to death may seek pardon. Article 539 of the Code of Criminal Procedure stipulates that: "A full pardon, granted by legislative enactment, decriminalizes an offence. Criminal proceedings in respect thereof shall be inadmissible and such actions may not be pursued further once they have been dismissed. If a conviction has been handed down, it shall be deemed null and void. Pardon from penalty shall be granted by a decision of the president of the Republic on the basis of a recommendation by the Minister of Justice subsequent to a final judgement. The pardon shall remit the penalty in whole or in part or commute it to a lighter penalty and shall apply to any supplementary penalty." A pardon does not prejudice the nature of the rights of third parties, except with their consent. Third party rights are deemed to comprise retribution (qisas), indemnity for bodily injury (diya) and money for the shedding of blood (arsh) (compensation for injuries). Article 47 of the Penal Code stipulates that: "Sentences of death, doctrinal punishment (hudd) or retribution (qisas) which are handed down to the guilty party shall not be enforced until after the president of the Republic has ratified the sentence."

Paragraph 5

37. In accordance with article 31 of the Penal Code, any person not having attained 18 years of age at the time when the act constituting the offence was committed is not held criminally responsible. If the prescribed penalty is death, he is sentenced to imprisonment for a period of not less than three years nor more than five years.

38. Similarly, the death sentence is not carried out on pregnant women and is not enforced on feast days or holidays in accordance with article 484 of the Code of Criminal Procedure, which stipulates that: "Neither the death sentence nor sentences of retribution (qisas) and doctrinal punishment (hudd) which entail the loss of life or limb shall not be enforced on official holidays or on holidays particular to the religion of the person sentenced. Enforcement of sentence against a pregnant woman shall be suspended until she has given birth, and in the case of a woman who is nursing until the child is weaned over a two-year period, provided that the child has a guardian. Such women shall be imprisoned until the time when the sentence is enforced."

39. Yemeni law thus prohibits enforcement of this sentence against pregnant and nursing women and the penalty is not enforced unless the child has a guardian.

Paragraph 6

40. The abolition of capital punishment is primarily incompatible with the principle of justice, impunity being a crime against human rights. The impediments to the abolition of capital punishment are attributable to religion, the Constitution and social circumstances.

VII. ARTICLE 7 OF THE COVENANT

41. Article 48 of the Yemeni Constitution prohibits physical and psychological torture, as well as the extraction of confession by force during investigations. Any person whose liberty is restricted has the right to refrain from making statements except in the presence of his lawyer. It is forbidden to imprison or detain a person in a place other than those subject to the Organization of Prisons Act, and torture and inhumane treatment are prohibited at the time of arrest and during the period of detention or imprisonment.

42. This is underlined by article 6 of the Code of Criminal Procedure: "Torture, inhumane treatment or physical or psychological harm inflicted on an accused person in order to extract a confession from him by force shall be prohibited. Any statement which an accused person or witness is proved to have made under pressure created by any of the practices mentioned shall be null and void." Articles 166, 167 and168 of the Penal Code contain provisions which prohibit and punish acts that lead to forced confession, the infringement of individual liberty and the use of force. Article 50 of the Constitution also stipulates that: "Punishments may not be enforced by illegitimate means. Enforcement shall be regulated by law."

43. One example which can be cited is the case where an accused person died as a result of the torture to which he was subjected by a security officer from the governorate of Mahwit and two police officers. The Government pronounced the three officers guilty and discharged them from service. It also ordered imprisonment of the director of security for term of 10 years, the payment of three million riyals (about US$19,000) in blood money (*diya*) to the victim's family and imprisonment of the two other officers for a term of five years.

44. The Supreme National Committee for Human Rights organized a human rights awareness-raising seminar for officers of the law and members of the Department of Public Prosecutions during the period 17-20 October 1999 in the capital, San'a. The campaign went on to cover every governorate in the Republic during 2000. The purpose of this seminar was to provide training for police station heads and deputies, political security officers, criminal investigators, members of the Department of Public Prosecutions, military intelligence officers and military police officers in all governorates and raise their awareness of human rights and the rights of suspects in particular, the aim being to ensure that they commit no violations owing to lack of awareness of the legal procedures to be followed in cases of arrest, investigation and interrogation. The seminar also focused on the principle of the sovereignty of the law and respect for human rights in Yemen by addressing two core issues: the human rights of suspects in national and international law; and potential human rights violations and the prescribed penalties for such violations in Yemeni and international law.

VIII. ARTICLE 8 OF THE COVENANT

Paragraphs 1 and 2

45. The traditional form of the slave-trade has been non-existent in Yemen for a very long time. The modern-day form of the slave-trade, such as traffic in women and the forced prostitution of women, is treated as a serious offence under Yemeni law, which provides for heavy penalties, including death, as stated in article 280 of the Penal Code. Such offences and the penalties therefor are covered under articles 277 to 281 of the Act, article 278 of which provides for the penalty of "imprisonment for a period of not more than three years or a fine for any person who engages in fornication or prostitution." Article 279 states that the penalty for any person who incites others to engage in prostitution is imprisonment for a period of not more than three years. If the person subject to such incitement is a minor under 15 years of age who then commits the offence, the person responsible for the incitement may receive a penalty of imprisonment for a term of up to 15 years. Any person who incites his wife or a close female relative to engage in prostitution may be sentenced to death in accordance with the provision of article 280 of the same Act.

Paragraph 3

46. Slavery no longer has any place in Yemeni society and forced or compulsory labour is prohibited by law. Article 29 of the Constitution stipulates that: "Work is a right, an honour and a necessity for the development of society. Every citizen shall have the right to engage in the work of his choice, within the limits of the law, and forced labour shall not be imposed on citizens unless required by law for the performance of a public service in return for equitable remuneration." Article 24 of the Constitution also stipulates that: "The State shall guarantee equal political, economic, social and cultural opportunities for all citizens and shall promulgate legislation to that end." Article 9 of the Labour Act No. 5 of 1970 likewise stipulates that: "Yemenis shall have the equal right to work."

IX. ARTICLE 9 OF THE COVENANT

Paragraph 1

47. Both the Constitution and the Code of Criminal Procedure contain a number of provisions which guarantee the liberties of citizens and safeguard their dignity and security in the manner stated below. Article 48 of the Constitution stipulates that:

> "(a) The State shall guarantee the personal freedom of citizens and shall safeguard their dignity and security. The law shall determine the circumstances under which a citizen may be deprived of his liberty, and no one may be deprived of his liberty except by a judgement from a competent court.
>
> "(b) Except in cases of flagrante delicto, no one may be arrested, searched or detained without a warrant issued by a magistrate or the Department of Public Prosecutions, in accordance with the law, where such arrest, search or detention is

necessitated by the requirements of an investigation or the maintenance of public order and security. No one shall be placed under surveillance or investigated except in the manner prescribed by law."

Paragraph 2

48. Article 48, paragraphs (c) and (d), of the Constitution stipulate that a detainee must be informed of the reason for his detention and of the charge against him. The period of remand in custody must also be determined, as stated in paragraph (c): "The magistrate or the Department of Public Prosecutions must inform him of the reasons for arrest, as well as question him and permit him to make statements in his defence and lodge any protests. He must then immediately issue a substantiated order for his remand in custody or release him. Under no circumstances may the Department of Public Prosecutions remand a person in custody for longer than seven days unless a further judicial order is issued. The maximum period of remand in custody shall be determined by law." Paragraph (d) stipulates that: "When any person is arrested for any reason, an individual designated by him must be notified immediately. The same shall also apply on the issuance of any judicial order for his further remand in custody. If the person arrested is unable to designate anyone, notification must be given to his relatives or to whomsoever it may concern."

Paragraph 3

49. In regard to remand in custody, safeguards and guarantees, article 48, paragraph (c), of the Constitution stipulates that: "Any person who is provisionally arrested on suspicion of the commission of a crime must be brought before a magistrate within a maximum of 24 hours from the time of his arrest. The magistrate or the Department of Public Prosecutions must inform him of the reasons for the arrest, question him and permit him to make statements in his defence and lodge any protests. He must immediately issue a substantiated order for his remand in custody or release him. Under no circumstances may the Department of Public Prosecutions remand a person in custody for a period longer than seven days unless a further judicial order is issued. The maximum period of remand in custody shall be determined by law."

50. The Code of Criminal Procedure contains various safeguards, including the stipulation that an investigator of serious offences may not question the accused person or confront him with other accused persons or witnesses until his lawyer, should he have one, has been invited to attend. Furthermore, he must notify the accused person of his legal right to remain silent in the absence of his lawyer. It is also prohibited by law to remand an accused person in custody until he has been questioned and a number of conditions have been satisfied, including the existence of sufficient evidence of the charge. Further conditions are that the offence must be legally punishable by a term of imprisonment of not more than three months; the accused person must be over 15 years of age; he may be remanded in custody only by an order from a competent member of the Department of Public Prosecutions, written on official notepaper; and he may be remanded in custody only in the places specifically designated for that purpose.

51. In cases involving serious offences, the law permits the Department of Public Prosecutions, either on its own initiative or at the request of the accused person who is remanded

in custody, to order the latter's release at any time, with or without bail, provided that he undertakes to present himself whenever so requested and does not refuse execution of any sentence which may be handed down against him.

52. In cases involving minor offences, the Department of Public Prosecutions must release the accused person, provided that he has a known place of domicile in the country.

Paragraph 4

53. The Code of Criminal Procedure stipulates that the accused person must be brought before a magistrate within 24 hours of his arrest. He must immediately issue a substantiated order for his remand in custody or release him. The person shall under no circumstances be held in detention for a period longer than seven days unless a further judicial order is issued.

Paragraph 5

54. Article 48, paragraph (e), of the Constitution stipulates that the accused person has the right to receive compensation for unlawful detention and that the law determines the punishment for any person who contravenes the provisions of any of the paragraphs of the article, together with appropriate compensation for damage which the person may suffer as a result of such contravention. As already stated, the right of an accused person to receive compensation for any damage that he may suffer as a result of arbitrary procedures is also guaranteed under the Constitution.

55. The difficulties facing the authorities in applying these provisions and guaranteeing the human rights of accused persons in accordance with the prescribed safeguards cannot be overlooked. Major efforts are therefore being made to raise awareness of the importance of complying with these provisions, and the agencies of the Department of Public Prosecutions regularly carry out drives to inspect places where individuals are remanded in custody.

56. The role played by lawyers has become increasingly important and furthers the application of these provisions. Owing to scarce financial and technical resources, officers of the law may, in some instances, detain a person beyond the legally prescribed periods, although the incidence of such cases is lessening by the day.

X. ARTICLE 10 OF THE COVENANT

Paragraph 1

57. Both the Constitution and the law contain a number of principles and provisions which guarantee that prisoners are treated humanely and with dignity, as illustrated by the following. Article 48, paragraph (b), of the Constitution stipulates that: "The dignity of any person whose liberty is in any way restricted must be safeguarded. The practice of physical or mental torture is prohibited, as is the extraction of a confession by force during investigations." Article 11 of the Code of Criminal Procedure stipulates that: "Personal freedom is guaranteed and a citizen may not be accused of the commission of an offence or have his freedom restricted except by order of the competent authorities as designated in this Code." Article 6 of the Code of Criminal

Procedure also stipulates that: "Torture, inhumane treatment or physical or psychological harm inflicted on an accused person in order to extract a confession from him by force shall be prohibited. Any statement which an accused person or witness is proved to have made under pressure brought on by any of the practices mentioned shall be null and void." Article 13 of the Code further stipulates that: "Any person who is aware that an individual has been arrested and imprisoned without legal justification or in a place other than those specially designated for such purpose must so inform a member of the Department of Public Prosecutions, who must take prompt action to release any person who has been wrongfully imprisoned. If, however, it is established that the person was imprisoned with legal justification, he shall be immediately transferred to a penal institution. In all cases, a report on the action taken shall be drawn up."

Paragraph 2 (a)

58. With regard to the categorization of prisoners, article 32 of the Organization of Prisons Act No. 48 of 1991 stipulates that:

> "A place known as an admission centre shall be provided in the prison. Its function shall be to interview prisoners upon their entry into prison. Prisoners shall be categorized as follows:
>
> > "First offenders shall be isolated from prisoners with previous convictions;
> >
> > "Prisoners who have committed extremely serious social offences shall be isolated;
> >
> > "Foreign prisoners shall be isolated from Yemeni prisoners;
> >
> > "Juveniles shall be isolated from adult prisoners;
> >
> > "Female prisoners shall be isolated from male prisoners."

59. Article 71 of the Code of Criminal Procedure stipulates that:

> "A person under arrest shall be detained in a place separate from that provided for convicts. He shall be presumed innocent and shall not be harmed physically or mentally with a view to extracting a confession from him or for any other purpose."

Paragraph 2 (b)

60. Article 11, paragraph (a), of the Juveniles Act No. 24 of 1992 stipulates that: "A juvenile under the age of 12 may not be kept in a police station or other security establishment. His guardian or trustee or another trustworthy person must be requested to assume responsibility for his custody, failing which he must be placed in the nearest juvenile rehabilitation home for a period of not more than 24 hours. If his release constitutes a danger to himself or to third parties, he must thereafter be referred to the Department of Public Prosecutions for consideration of his case in accordance with the provisions of this Act."

61. Paragraph (b) of the same article also stipulates that: "If necessary, a juvenile who has reached the age of 12 may be kept in any police station for up to 24 hours, provided that he is kept in a special place which precludes his mixing with other detainees who are older than him." Article 13 of the Act further stipulates that juvenile cases must be regarded as urgent cases which should be dealt with rapidly by the judicial authorities, and that the release of juveniles at any stage of the investigation or trial is the preferable course of action in all cases if it does not prejudice the course of justice and constitutes no danger."

62. Article 14 stipulates that it is forbidden to maltreat juveniles, to use iron manacles and to employ physical coercion when enforcing sentences handed down against those subject to the provisions of the Act, which also stipulates that one or more special juvenile courts must be established by decision of the Higher Council of the Judiciary at the proposal of the Minister of Justice. The special features of such courts must also be determined. Until September 1999, juveniles were held in separate sections of the main prison in San'a. However, they have now been altogether removed from the prison and placed in a juvenile correction centre.

Paragraph 3

63. The Organization of Prisons Act No. 48 of 1991 contains various provisions which regulate the care and treatment of prisoners in penal institutions with a view to guaranteeing the re-education, reform, rehabilitation and social reintegration of prisoners. Article 3 specifies the target objectives with respect to the treatment of prisoners inside prison, which are exemplified in the following:

> "1. The reform, correction and rehabilitation of prisoners through the use of all means and influences, both educational and medical, as well as vocational training, social services, sports, cultural and recreational activities;
>
> "2. The creation in prisoners of the desire and inclination to lead a respectable life as worthy citizens."

64. Section 4 of the aforesaid Act regulates the principles for the reform, rehabilitation and vocational training of prisoners; article 12 stipulates that: "The prison administration must organize prison work in conditions which approximate work conditions outside prison in terms of type of work, manner of performance and the kind of tools and equipment used." Article 13 stipulates that work should be part of the execution of the penalty and not part of the penalty itself, and that work should be regarded as necessary in order to preserve the constitution of the prisoner and the interests of society. Articles 14 and 15 stipulate that daily working hours should not be less than four hours nor more than six hours. The employment of prisoners is also forbidden on official and weekly holidays and in the case of prisoners who are remanded in custody. Article 17 stipulates that prison work must aim to rehabilitate the prisoner and provide him with vocational training in order to promote his social reintegration and transform him into a worthy citizen.

65. Article 18 stipulates that industrial safety measures must be provided in prison workplaces. Article 19 stipulates that a prisoner has the right to receive a wage for the work which he performs and to be awarded compensation for occupational injuries in accordance with

the Labour Act. Articles 20, 21 and 22 of the aforesaid Act also stipulate that prisoners must have access to appropriate facilities and means to enable them, and particularly those who are illiterate, to further their studies during their time in prison. Prisoners who have the desire and potential to pursue their studies must be given the opportunity to do so. At least one preacher (spiritual guide) must be assigned to each prison with a view to creating the desire for moral rectitude among prisoners and encouraging them to perform their religious duties. Each prison must have at least one specialist in the social sciences and psychology and must develop cultural programmes to occupy prisoners during their leisure time. Prisoners must also be given the opportunity to engage in sports and recreational activities.

66. Section 5 of the Act likewise regulates the health care of prisoners; article 23 stipulates that the prison administration must pay due attention to the health aspect of life in prison and ensure that prisoners have access to medical and preventive treatment and care, to which end it must also appoint medical specialists in conjunction with the Ministry of Health. Article 24 stipulates that the guidelines and instructions of doctors concerning the physical and mental health and preventive treatment of prisoners must be carried out by the prison administration. Article 26 stipulates that a prisoner who is psychologically or mentally ill must be transferred to the hospital for mental illnesses. Articles 27 and 28 also deal with the question of women prisoners who are pregnant, stipulating that they must have access to the necessary prenatal, perinatal and post-natal care. It is prohibited for the official records to mention the name of a child born to a woman prisoner and for the child to remain in prison with its mother after it has reached two years of age, unless the doctor decides otherwise.

67. Section 6 likewise specifies the facilities accorded to prisoners in connection with seeing their families, relatives and friends, receiving and replying to correspondence and receiving and remitting money transfers. The majority of these guarantees are observed in practice, particularly in penal institutions, which are suitably equipped and which have the human and material resources to meet the requirements under the provisions of these articles. The Department of Prisons has strived to develop the resources of various penal institutions and is now in the process of finalizing a comprehensive programme to improve conditions in all the institutions under its jurisdiction, which is to be implemented as soon as the necessary material and financial resources are available.

XI. ARTICLE 11 OF THE CONVENTION

68. Section 4 of the Civil Code (Act No. 19 of 1992) deals with cases of insolvency. Article 366 defines an insolvent as a person who owns nothing other than items of necessity which are exempt from distraint or sale, namely accommodation and clothing fit for a person such as himself, the tools of such trade as he may practise, books in the event that he is a person of learning and sustenance for himself and his family dependents.

69. Article 367 of the same Act stipulates that: "If a debtor is solvent, his creditor may seek his imprisonment in order to compel him to settle his debt." A contrario sensu, this clearly implies that an insolvent debtor cannot be imprisoned in order to compel him to settle his debt. In fact, in cases where a debtor's assets may be taken in execution of a judgement, article 252, paragraph (b), of the Civil Code prohibits enforcement against the person of the debtor by way of imprisoning him. Article 370 of the Civil Code stipulates no requirement to establish the state of

insolvency other than that it should be apparent from the oath sworn by the insolvent. Article 372 of the Code also stipulates that if the insolvency of a debtor is established by a court judgement, his creditor shall be barred access to him until his solvency is established.

70. Article 368 of the Civil Code moreover stipulates that: "If a debtor is insolvent, he shall not be placed in debt bondage, nor shall he be obliged to accept a gift or take blood money for a wilful felony for which retribution (qasas) is the prescribed penalty. A woman who is insolvent shall not be obliged to enter into marriage in order to settle her debt from the bride-price or to enter into marriage at a bride-price commensurate with that received by her peers, since she may enter into a marriage at a lesser bride-price if she so wishes." Social customs also play an important role in affirming and giving effect to these articles.

XII. ARTICLE 12 OF THE COVENANT

Paragraphs 1 and 2

71. Yemeni legislative enactments guarantee liberty of movement, which they regard as a fundamental freedom guaranteed to citizens. Article 57 of the Constitution stipulates that: "Every citizen shall be guaranteed freedom of movement from one place to another on Yemeni territory. Movement may not be restricted, except in the instances prescribed by law with a view to ensuring the security and safety of citizens. Freedom to enter or leave the Republic shall be regulated by law."

Paragraph 3

72. Article 15 of the Code of Criminal Procedure also stipulates that: "Restrictions shall not be placed on the freedom of assembly, movement, residence and passage of citizens except in accordance with the provisions of this Code."

Paragraph 4

73. Article 57 of the Constitution states that: "No citizen may be expelled from or prevented from returning to Yemeni territory."

XIII. ARTICLE 13 OF THE COVENANT

74. Act No. 47 of 1991 regulates the process of the entry, residence and movement of aliens in the territory of the Republic of Yemen. Only purely statutory restrictions, recognized in many other countries of the world, are stipulated, such as those in connection with the regulations for the entry and exit of aliens at the legitimate places designated for such purpose by the competent authority. Aliens must be in possession of a valid passport or any substituting document and are permitted entry by the competent authority. The Act also stipulates the alien registration procedures and regulates the residence and movement of aliens within the country. Article 31 of this Act stipulates that: "An alien who is a private resident may not expelled unless his presence threatens the internal or external security and integrity of the State, its national economy and

public health or public morals, or unless he is dependent on support from the State." It also stipulates that expulsion must be carried out by a decision of the Minister of the Interior following submission of the matter to the Expulsion Committee.

75. It further specifies the exempted categories to whom the provisions of the law on the entry and residence of aliens do not apply, namely members of the foreign diplomatic and consular corps accredited to the Republic, provided that they are in the service of the State which they represent in accordance with international law, as well as the crew and passengers of ships and aircraft arriving in the Republic pursuant to the conditions and circumstances stipulated in article 138 of the Act.

XIV. ARTICLE 14 OF THE COVENANT

Paragraph 1

76. The principle of equality before the law is one of the main principles underlined in Yemeni legislative enactments. It is also one of the most important fundamental rights established for individuals in Yemeni society. As already mentioned, article 41 of the Constitution stipulates that: "All citizens have equal rights and duties." Article 25 stipulates that: "Yemeni society is founded on social solidarity that is based on justice, freedom and equality in accordance with the law." Affirming this principle of the Constitution, article 5 of the Code of Criminal Procedure prescribes that: "Citizens are equal before the law and an individual may not be punished or harmed on grounds of nationality, race, origin, language, belief, occupation or standard of education." This principle is clearly specified in the rules and laws regulating litigation. Article 2 of the Judicial Authority Act No. 1 of 1991 thus stipulates that: "Litigants shall be equal before the law, regardless of their status and circumstances."

77. The Code of Civil Procedure likewise requires judges to abide by the rules of conduct for the judiciary, stipulated in articles 16 to 26 of the Code, and to treat the litigants in their court on an equal basis. They are forbidden to make signs to a litigant, to prompt him in argument or to suborn witnesses. They are also forbidden to offer hospitality to or accept hospitality from a litigant, receive gifts or breach the rules or ethics of their profession in accordance with the law.

78. Article 324 of the Code of Criminal Procedure also prescribes the equal right to establish proof, stipulating that: "All parties to the proceedings, including the accused person, the representative for the defence, the civil plaintiff and the party bearing civil liability, shall have equal rights and duties. They shall have the right to submit and discuss evidence and request its examination by experts subsequent to the approval of the court." It is thus clear that Yemeni legislative enactments embrace the principle whereby an accused person enjoys fundamental rights equal to those enjoyed by Yemeni citizens. It is also an essential and important right which an accused person enjoys throughout every stage of the case and the judicial investigations.

79. Article 1 of the Judicial Authority Act stipulates that: "The judicial authority is independent in the discharge of its functions and, in their administration of justice, judges are independent and subject to no authority other than that of the law. No party may in any way

interfere in a court case or in a matter of justice. Such interference shall be regarded as an offence punishable by law and prosecution in respect thereof shall not be statute-barred."

80. Article 5 of the Act stipulates as follows:

"(a) Court hearings shall be held in public, unless the court decides that they should be held in camera in order to safeguard public order and morals. In all cases, judgement shall be pronounced at a public hearing.

"(b) Pleading shall be conducted orally or in writing, unless the law stipulates either form in particular."

Article 114 of the Code of Procedure (Act No. 28 of 1992) also stipulates that: "Pleas shall be heard in public unless the court decides, at its own discretion or at the request of the opposing parties concerned, to hear them in camera in order to safeguard public order or in consideration of public morals or the sacrosanct nature of family life."

81. Article 20 of the Juvenile Welfare Act No. 24 of 1992 stipulates as follows:

"(a) A juvenile shall be tried in camera; only his relatives, witnesses, lawyers, social workers and persons specially authorized by the court may attend his trial.

"(b) Where it deems necessary, the court may order the removal of the juvenile from the hearing after he has been questioned, or the removal of any of the persons referred to in the foregoing paragraph.

"(c) If the juvenile is removed from the hearing, the court may not order the removal of his lawyers or the social worker. Moreover, the court may not deliver a conviction until the juvenile has been apprised of the proceedings that have taken place in his absence.

"(d) The court may exempt the juvenile from attending the proceedings in person if it believes that his interest so requires and that it is sufficient for his guardian or trustee to appear on his behalf, in which case the judgement shall be deemed to have been handed down in his presence."

Paragraph 2

82. An accused person is presumed innocent until he is proved guilty. Article 47 of the Constitution stipulates that an accused person is presumed innocent until proved guilty by a final court judgement. Article 4 of the Code of Criminal Procedure likewise stipulates that: "An accused person is innocent until proved guilty and he shall be given the benefit of the doubt. No penalty shall be imposed until a trial has been conducted, in accordance with the provisions of this Act, in which the right of defence is safeguarded."

83. The facts indicate that there is strict compliance with these provisions. The arresting authorities carry out the inquiry within specified periods on the basis of rigorous proof. Certain

difficulties arise, however, as a result of the scant resources and poor human expertise. These difficulties have been addressed by upgrading the criminal investigation facilities and laboratories, which has aided the detection of crime and prevented offenders from escaping with impunity.

Paragraph 3 (a)

84. As for the right of every accused person to a fair trial, article 47 of the Constitution stipulates that every accused person is innocent until he is proved guilty. As already stated, court hearings must be held in public in the above-mentioned manner. Article 73 of the Code of Criminal Procedure stipulates that: "Any person who is arrested shall be immediately notified of the reasons for the arrest. He shall have the right to examine the arrest warrant, to contact whomsoever he believes should be informed of what has occurred and to seek the assistance of a lawyer. He must also be promptly informed of the charge brought against him."

85. Article 177 of the Code of Criminal Procedure also stipulates that the examining magistrate must explain the charge against the accused and confront him with the proofs and evidence on which the charge against him is based. The examining magistrate must ensure that the accused enjoys his full rights of defence, in particular his right to refute and contest the evidence against him. The accused has the right at all times to defend himself or to request that any investigation procedure be carried out.

Paragraph 3 (b)

86. Reference has already been made to the right of an accused person to conduct his own defence or to avail himself of the services of a defence lawyer of his choice, as provided for under article 48, paragraph (b), of the Constitution. It is a right which is guaranteed by law and in practice.

Paragraph 3 (c)

87. With regard to the need for the early trial of an accused person, the Constitution stipulates that the accused person must be brought before a magistrate within a maximum of 24 hours from the time of his arrest. Article 269 of the Code of Criminal Procedure stipulates that a charge against an accused person who, on account of the charge, is in detention when he is brought to trial is regarded as an urgent matter on which the court must reach a swift decision. Article 299 of the Code stipulates that: "The case shall be examined at a hearing held within one week of its referral to the competent court, which must, as far as possible, examine the case at successive hearings and reach a swift decision thereon."

88. In reality, numerous difficulties arise in complying with these periods to the letter as a consequence of the meagre technical and financial resources available to enable the timely completion of investigation. Practical steps are currently being taken to regulate these procedures, which cannot be deferred other than for a sound legal reason.

Paragraph 3 (e)

89. Article 354, paragraph (a), of the Code of Criminal Procedure stipulates that the court must hear the witnesses for the prosecution. When a witness has completed his testimony, the judge must ask him if the accused person present is the person to whom his testimony refers and must then ask the accused if he has any objections to the testimony. The witness is then questioned by the prosecution, followed by the private claimant, the civil plaintiff, the accused and the person bearing civil responsibility in that order.

Paragraph 3 (f)

90. As for an accused person who does not speak the Arabic language, article 335 of the Code stipulates that: "If the accused or any of the witnesses is unfamiliar with the Arabic language, the court must seek the services of an interpreter." Article 336 of the Code stipulates that a person who is a witness or a member of the court hearing the case may not be chosen as an interpreter, even with the consent of the opposing parties. If this condition is violated, the proceedings are deemed invalid.

Paragraph 3 (g)

91. Article 178 of the Code of Criminal Procedure stipulates that the accused must not be compelled to take an oath or to answer questions. Similarly, his act of declining to do so is not regarded as proof of the charge brought against him. It is also prohibited to use deception or violence against the accused or in any way bring pressure to bear on him with a view to inducing or forcing him to confess. Article 333 also stipulates that the accused and other litigants have the right before the closure of pleading to request that their witnesses be heard, that any other procedure be taken and so forth. Article 360 further stipulates that: "The court may not question the accused without his consent." Article 363 of the Code stipulates that: "The accused shall not be liable to punishment if he refuses to reply to questions put to him or if the reply which he gives is misleading. Such replies shall be regarded as a denial which is to be followed by the hearing of the evidence."

Paragraph 4

92. See the information provided in connection with paragraph 1 of this article.

Paragraph 5

93. Concerning the right of an accused person to resort to a higher court, article 7 of the Judicial Authority Act No. 1 of 1990 specifies three levels of litigation before the following courts:

- The Supreme Court;
- The court of appeal;
- The court of first instance.

The Code of Criminal Procedure, volume 4, regulates the rules, procedures and time-limits for appeal against interlocutory judgements, appeal to the supreme court and review applications (see the structure of the judiciary in the first part of the report).

Paragraph 6

94. Article 465 of the Code stipulates that: "If the person sentenced applies for compensation for damage which he has suffered as a result of an earlier judgement, the court may award him compensation in the judgement acquitting him." Article 466 also stipulates that: "The State shall be responsible for payment of the compensation awarded and may collect the same from the private claimant, the perjured witness, the expert or any person who caused the conviction to be pronounced." Article 474 further stipulates that: "In the event of an appealed judgement being quashed or amended, the person sentenced must have his entitlements restored in accordance with the general rules."

Paragraph 7

95. Concerning the prohibition of retrial once a final judgement has been handed down, article 390 of the Code of Criminal Procedure stipulates that: "A criminal action brought against an accused person and the offences of which he stands charged in such action shall lapse following the pronouncement of a final judgement therein." Article 391 of the Code also stipulates that: "Once a final judgement has been pronounced in a criminal action, it is not permissible to institute further such proceedings on the basis of new evidence, new circumstances or a change in the legal definition of the offence."

XV. ARTICLE 15 OF THE CONVENTION

Paragraphs 1 and 2

96. As the accused person is undeniably regarded as the disadvantaged party in criminal proceedings, it is essential for reasons of justice that he should have guarantees to ensure application of the law most conducive to his interests. This principle is therefore firmly established in Yemeni criminal legislative enactments as follows:

- Article 47 of the Constitution stipulates that: "It shall be prohibited to enact any law which punishes acts with retroactive effect from the date of its promulgation."

- Article 376 of the Code of Criminal Procedure also stipulates that: "If the court finds that the act is unproven and unpunishable by law, it shall acquit the accused person and release him if he is in detention by reason of the said act."

- Article 377 of the Code further stipulates that: "If it becomes clear to the court that, at the time of commission of the act, the accused person was in a state of diminished responsibility or that there are impediments to punishment, it shall pronounce judgement for the case to be ended and for his immediate release if he was imprisoned as prescribed by law."

- Article 4 of the Penal Code stipulates that: "The law in force at the time of the commission of the offence shall be applied. However, if one or more laws have been promulgated following the occurrence of the offence and before final judgement has been handed down, the law that is most conducive to the interests of the accused shall be applied."

97. If, subsequent to a final judgement, a law is promulgated which renders unpunishable the offence for which the criminal was sentenced, execution of the sentence is halted and its penal effects are ended. If, however, for a specific period, a law is promulgated which designates an act or an act of omission as an offence, or which increases the prescribed penalty therefore, the expiration of the said period does not preclude the application of that law to offences perpetrated during the period in question.

98. The law considered to be most conducive to the interests of the accused is also applied in regard to means of appeal and the rules on time-limits in accordance with article 19, paragraphs 1 and 3, of the Code of Criminal Procedure, which stipulates that the means of appeal against judgements are subject to the law in force at the time when the judgement was pronounced, unless new legislation is more conducive to the interests of the convicted person. In that case, such legislation must be observed in regard to application of the rules on time-limits if they are more conducive to the interests of the accused person than any time-limit begun prior to the introduction of those rules and not yet complete.

XVI. ARTICLE 16 OF THE COVENANT

99. Article 38 of the Civil Code (Act No. 19 of 1992) stipulates that: "The legal personality of the individual shall commence at the time when he is born live and shall end at his death." Article 39 of the Code stipulates that: "Birth and death shall be entered in the records designated for such purpose ..." Article 46 of the Code stipulates that: "In personal dealings, an individual shall be known by his given name and the names of his father and grandfather, or by a family name which distinguishes him." Such recognition is not locally restricted under Yemeni legislation.

XVII. ARTICLE 17 OF THE COVENANT

Paragraph 1

100. Under Yemeni legislative enactments, interference in a person's privacy or family affairs is expressly prohibited; article 48, paragraph 1, of the Constitution stipulates that: "The State shall guarantee the personal freedom of citizens and shall safeguard their dignity and security ..." Article 52 of the Constitution also stipulates that: "Homes and places of worship and learning shall be inviolable and may not be placed under surveillance or searched except in the circumstances prescribed by law." Article 53 of the Constitution further stipulates that: "The freedom and confidentiality of communications by post, telephone, telegraph and all other media shall be guaranteed. They may not be placed under surveillance, searched, divulged, delayed or seized, except under the terms of a court order or in the circumstances prescribed by law."

101. The Code of Criminal Procedure also contains various provisions and legal rules which confirm these constitutional principles guaranteeing personal human freedoms, including the following articles. Article 111 stipulates that: " Personal freedom is guaranteed and a citizen may not be accused of the commission of an offence or have his freedom restricted except by order of the competent authorities in accordance with this Code." Article 12 stipulates that: "1. Homes and places of worship are inviolable and may be placed under surveillance or searched only by substantiated order of the Department of Public Prosecutions, in accordance with this Code, when a person residing in the house to be searched has already been charged with the commission of an offence for which the minimum penalty is imprisonment, or with being an accomplice in the commission thereof, or if strong evidence exists to prove that he is in possession of items connected with the offence. In all cases, the search warrant must be substantiated."

102. The freedom and confidentiality of communications by post, wire, wireless and all other media is guaranteed under the Constitution. They may not be placed under surveillance, searched, divulged, delayed or seized, except in the circumstances prescribed by law or by order of the Department of Public Prosecutions or the competent court." Article 14 stipulates that:

> "The inviolability of the private life of a citizen may not be breached in circumstances other than those permitted under this Code. The commission of any of the following acts shall be deemed to constitute a breach thereof:
>
> > "The interception, recording or transmission of conversations conducted in a private place or by telephone or any other type of apparatus;
> >
> > "The use of any type of apparatus to take or transmit a picture of a person in a private place;
> >
> > "The examination or seizure of letters, correspondence or telegrams."

103. Article 15 stipulates that: "Restrictions shall not be placed on the freedom of assembly, movement, residence and passage of citizens except in accordance with the provisions of the law." Article 16 stipulates that: "By way of derogation from the provisions of article 37, there shall be no abatement of the right for a criminal action to be heard concerning offences which undermine the freedom or dignity of citizens or which constitute an assault on the freedom of private life."

Paragraph 2

104. The penal laws provide for the conviction and punishment of any person who obstructs the private and family affairs of the individual. Articles 246, 253, 255, 256 and 257 of the Penal Code (Act No. 12 of 1994) provide for the punishment of any person who violates these freedoms or intrudes in the private life of any individual. The punishment is more severe if the person who carries out such intrusion is a public servant.

105. Various cases involving these kinds of violations have been brought before the courts in Yemen, which handed down judgements providing redress for those having suffered intrusion into their private affairs.

XVIII. ARTICLE 18 OF THE CONVENTION

Paragraphs 1 and 2

106. Yemenis have been adherents and followers of Islam for over 15 centuries and the Yemeni people of today continue to embrace Islam as their religion. It is the official religion of the State and the Constitution is derived from the true spirit of the religion. The position of the State vis-à-vis paragraphs 1 and 2 of this article is thus identical to that of all Islamic States in the sense that, inasmuch as it believes in freedom of creed and conscience, it holds that to change one's religion and to proclaim such change creates discord that is highly detrimental to social stability and security. Given the belief of the Yemeni Government in the importance of devotion to the Islamic religion, the freedom of religion and conscience starts with the individual himself, who is aware that the religion of God is Islam. Islam specifies conditions for entering and leaving the faith. The individual has the option of free will, as created and bestowed by God. Non-Muslims in Yemen have full freedom to practice their religious ceremonies and rites of worship without coercion or pressure.

Paragraphs 3 and 4

107. The freedom of the individual to manifest his religion or belief is subject to a provision of the Yemeni Constitution which derives from the Islamic Sharia and is based on the principle of respect for the beliefs of others and for their freedom of choice. It is impermissible, however, to endanger overall peace in society by unsettling its spiritual stability and disturbing its comfort in its faith or by doing anything which is likely to threaten public safety, order and the fundamental rights and freedoms of others. As for parents, they must ensure that the religious and moral upbringing of their children is in keeping with their belief without being incompatible with lofty human values based on tolerance, brotherhood, goodwill and peace.

XIX. ARTICLE 19 OF THE COVENANT

Paragraph 1

108. In Yemen, freedom of thought and expression of opinion is not merely a politically motivated banner that is raised and lowered as suits the occasion. On the contrary, it became an essential pillar and cornerstone of the political system following the establishment of the Republic of Yemen on 22 May 1990 and equally represented a major political achievement alongside the multi-party system accomplished in the wake of Yemeni unification. Article 42, paragraph 3, of the Constitution stipulates that: "Every citizen shall have the right to participate in political, economic, social and cultural life. The State shall guarantee freedom of thought and expression of opinion orally, in writing or in graphic form, within the limits of the law."

Paragraph 2

109. Article 27 of the Constitution also stipulates that: "The State shall guarantee freedom to conduct scientific research and produce literary, artistic and cultural works which are in keeping with the spirit and aims of the Constitution, and shall provide the facilities needed to that end. It shall likewise furnish every assistance to promote the arts and sciences, and encourage scientific and artistic creativity and technical innovation and protect the results of the same." Articles 3, 4, 5, 6, 13, 14, 15, 16, 17, 18, 19 and 33 of the Press and Publications Act No. 25 of 1990 contain various safeguards of freedom of thought and expression of opinion. The text of these articles reads as set forth below.

110. Article 3: "Citizens shall have the right to freedom of knowledge and thought, freedom of the press, freedom of expression and communication and freedom of access to knowledge and information in order to guarantee their ability to express their opinions orally, in writing, in pictorial or graphic form or through any other medium. Such right shall be guaranteed to all citizens in accordance with the provisions of the Constitution and the stipulations contained in the provisions of this Act."

111. Article 4: "The press shall be independent and shall be free to fulfil its mission of serving society, forming public opinion and expressing trends in public opinion by various means consistent with the Islamic religion, the constitutional principles of society and the State, the aims of the Yemeni revolution and the strengthening of national unity. Its activity may not be opposed except in accordance with the provisions of the law." Article 5: "The press shall be free to publish and to receive news and information from their sources, while remaining liable for what it publishes, within the limits of the law."

112. Article 6: "The rights of journalists and the holders of other copyrights shall be protected and they shall enjoy the legal safeguards needed for the exercise of their profession. Their right to express themselves without being called to account in an illegal manner is guaranteed by law, provided that such expression does not infringe the provisions of the law." Article 13: "A journalist may not be called to account for an opinion that he states or for accurate information that he disseminates, neither of which should provide cause for injury to him unless his act is in contravention of the law." Article 14: "A journalist shall have the right to obtain information, news, data and statistics from their sources, and shall have the right to publish them or not and to maintain the confidentiality of his sources of information. He may not be compelled to divulge his sources in accordance with the provisions of this Act." Article 15: "A journalist shall have the right to refrain from writing or preparing newspaper articles that are incompatible with his beliefs and opinions and that do not satisfy his journalistic conscience. He shall have the right to make such criticisms as he deems appropriate in order to state his opinion and express his point of view, irrespective of differences of opinion and intellectual judgements, within the framework of the provisions of the Constitution and of its principles." Article 16: A journalist shall have the right to examine official reports, facts, information and data and the party to whom they are accessible shall be required to enable him to examine them and benefit from them." Article 17 also accords to journalists the right to "cover any local, Arab or international event, irrespective of the nature of the official relations linking the State with the place of the event."

113. The punishment of journalists is subject to a set of criteria and limitations. Pursuant to article 18, "a journalist may not be dismissed, transferred to non-journalistic duties, suspended from work, prevented from writing or called to account except within the limits permitted by law and the regulations in force." Pursuant to article 19, he has the right to "protection of his rights through the framework of his trade union and by legitimate means which are constitutionally and legally guaranteed or by seeking direct recourse to the courts in accordance with the rules in force." Ever since Yemeni unification, the union of journalists has played a role in this connection. It is a freely and directly elected trade union and enjoys the unanimous support of all journalists.

114. Newspaper publication and ownership are regulated by the same Act, article 33 of which stipulates that: "The right to publish and own newspapers and magazines shall be guaranteed for all citizens, authorized political parties, individuals, public bodies corporate, innovative grass-roots organizations, ministries and government institutions in accordance with the provisions stipulated in this Act." Pursuant to article 34, any person wishing to "publish a newspaper or magazine shall simply submit a written application to the Ministry of Information comprising the following information:

> "The four elements of the name of the license applicant, as well as his family name and domicile;
>
> "The four elements of the names of the editor-in-chief, the editors-in-charge and the publishers, where applicable, as well as their family names, domiciles and qualifications;
>
> "The name of the establishment where printing takes place, if he does not have his own printing press;
>
> "The name of the newspaper or magazine, the language in which it is published, its dates of publication, its description and its address. The name of the newspaper or magazine may not resemble the name of any other newspaper or magazine previously published and legally still in existence;
>
> "The emblem of the newspaper or magazine, whether drawn, written or both. The emblem may not be identical to that of any other newspaper or magazine previously published and legally still in existence;
>
> "A statement of the capital of the newspaper or magazine or the name of the bank with which it conducts business as specified by the regulations stipulated in article 46, paragraph 1, of this Act."

115. The Ministry of Information issues decisions concerning licenses in accordance with article 35 of the same Act. The decision agreeing to the establishment of a newspaper or magazine states the following information: the name and address of the newspaper or magazine, details of its private printing press, where applicable, in accordance with the provisions of this Act, a description of the newspaper or magazine content (political, economic, social, cultural, technical or other), its dates of publication and its editor-in-chief. Such information in no way compromises the freedom and orientation of the magazine or newspaper. Article 36,

paragraph 2, also stipulates that: "Anyone whose application to establish a newspaper or magazine is denied may lodge a complaint against the decision with the courts within 30 days of the date when he is notified of the denial or upon the expiration of 30 days without a reply." Article 40 further stipulates that: "Parties, innovative grass-roots organizations, ministries and government institutions shall be exempt from the provisions of articles 34 and 35 in regard to the publication and dissemination of their newspapers and magazines." The exemption of political parties and grass-roots organizations is considered to serve as an incentive and encouragement to publication and hence as a firm guarantee of freedom and democracy. The parties covered by this article are simply required to provide the Ministry with the essential information provided for in article 41 of the Act, which states that: "Political parties, innovative grass-roots organizations, ministries and government institutions shall be required to provide the names of their editor-in-chief and press team members and to furnish information on any changes or amendments to the Ministry of Information within 10 days of their occurrence. The parties mentioned in this article shall be required to register their newspapers, magazines and private publications with the Ministry of Information."

116. Article 42 also stipulates that: "The editor-in-chief shall bear full responsibility for all items published in newspapers of political parties, innovative grass-roots organizations, ministries and government institutions in accordance with the provisions of this Act." Article 43 stipulates that: "Every newspaper or magazine must have an editor-in-chief who shall be directly responsible for the items which it publishes and who shall supervise the overall content. The editor-in-chief must also have several editors-in-charge answerable to him, each of whom shall supervise a particular section of the publication. The newspaper proprietor may be an editor-in-chief or an editor-in-charge if he satisfies the conditions provided for in this Act."

117. Article 46 also stipulates that: "The proprietor of the newspaper or magazine must satisfy the following conditions: he must hold Yemeni nationality; be legally competent; and must have no previous convictions for any offence involving breach of honour or trust unless he has been rehabilitated in accordance with the law. If the proprietor is an institution or a corporation, its shares must be nominal shares owned exclusively by Yemenis and the newspaper or magazine must have capital as specified in the regulations published by the Ministry of Information. Newspapers and magazines published by political parties, innovative grass-roots organizations and government bodies shall be exempt from such requirement."

118. As for conditions of service in the press, article 7 stipulates that: "Any person who engages in journalistic work must satisfy the following:

"He must hold Yemeni nationality;

"He must be not less than 21 years of age;

"He must be legally competent;

"He must have no convict ns for any offence involving breach of honour or trust unless he has been rehabilitated in accordance with the law;

"He must have obtained an academic qualification from a college or institute or must have experience in performing journalistic work for a period of not less than three years;

"He must be continually and effectively engaged in journalistic work."

119. Article 8 stipulates that: "In addition to the conditions stated in article 7, the editor-in-chief of the newspaper must satisfy the following:

"He should not be employed by a foreign State or party;

"He must be not less than 25 years of age;

"He must be fluent in the language in which the newspaper is published;

"He must have knowledge and experience of journalistic work amounting to not less than five years for those specializing in journalism and eight years for others;

"He must work full-time."

120. Article 17, paragraph 1, stipulates that: "A journalist shall have the right to be a correspondent for one or more of the Arab and foreign information media, provided that he obtains written authorization, renewable every two years, from the Ministry of Information."

121. As for the conditions of service for Arab and foreign journalists, article 27 stipulates that: "A journalist shall be accredited as a correspondent of one or more of the mass information media of Arab or foreign governments or bodies after being granted an accredited correspondent's card." Article 28 also stipulates that: "The Ministry of Information may accredit Arab and foreign journalists as correspondents for Arab and foreign newspapers, news agencies and radio and television stations for a renewable period of one year with a view to the pursuit of their journalistic work within the country, in accordance with the principle of like treatment. The Ministry may refuse or cancel their accreditation." Article 30, paragraph 1, also stipulates that: "Journalists and correspondents for newspapers and other media, as well as those working for Yemeni newspapers, must comply with the laws and regulations in force and respect the country's sovereignty and independence, as well as the creed, religious law, morals, customs and traditions of the Yemeni people. They must not engage in any activity which is likely to damage the country's security."

122. The import and circulation of newspapers, magazines and printed materials is regulated under article 56 of the Act as follows:

"(a) Any person who wishes to engage in the occupation of importing, selling and distributing cultural books, printed materials and magazines or in staging cultural exhibitions must obtain prior written authorization from the Ministry of Culture;

"(b) Any person who wishes to engage in the occupation of importing, selling, distributing and circulating newspapers and magazines must obtain prior written authorization from the Ministry of Information."

123. Article 57 stipulates that: "Any newspaper, magazine or material printed outside Yemen may be circulated, provided that it contain none of the items of which publication and circulation is prohibited in accordance with the law in force. The competent minister shall have the right to prohibit the circulation of any newspaper, magazine or printed matter if its contents are inconsistent with the provisions of this Act."

124. Article 58, paragraph 1, also stipulates that: "The proprietor of the newspaper, magazine or printed material shall have the right to complain to the courts about the decision to prohibit circulation." The courts have given decisions in more than one such case brought before them; most of the rulings delivered provided redress for newspapers which had been suspended and awarded them compensation.

125. Given that the freedom of opinion and expression is constitutionally and legally guaranteed, more than 280 publications are imported, which attests to the sincerity of the democratic approach of the Government.

Paragraph 3 (a) and (b)

126. The freedoms already stipulated are unrestricted except where they prejudice the freedom of others or encroach upon Yemeni national security. The meaning of the expression "within the limits of the law", which often appears in Yemeni legal texts, is that freedom of thought and expression of opinion is exercised in the same way as any freedom that cannot be established for all individuals except within the limits of the respect which each of them has for the freedoms of others. It was therefore necessary, in accordance with the Constitution, to state those limits in law in order to ensure that such freedoms are not used to violate the freedoms of others or damage Yemeni national security.

XX. ARTICLE 20 OF THE COVENANT

Paragraph 1

127. Article 6 of the Constitution stipulates that: "The State affirms its adherence to the Charter of the United Nations, the Universal Declaration of Human Rights, the Pact of the League of Arab States and the generally recognized rules of international law."

128. The sixth aim of the Yemeni revolution likewise calls for "compliance with the charters of the United Nations and international organizations and adherence to the principles of positive neutrality, non-alignment, and endeavours to establish world peace and promote the concept of peaceful coexistence among nations."

Paragraph 2

129. Article 103 of the Press and Publications Act No. 25 of 1990 stipulates that: "It shall be forbidden to publish and broadcast anything which foments tribal, factional, racial, regional or family arrogance or pride and to spread dissension and division among the individuals of society or anything which calls for their stigmatisation as heretics or which incites the use of violence and intimidation." Article 5 of Republican Decree No. 13 of 1994 (the Code of Criminal

Procedure) stipulates that: "Citizens shall be equal before the law and an individual may not be punished or harmed on grounds of nationality, race, origin, language, belief, occupation, standard of education or social status."

130. Article 8 of the Political Parties and Organizations Act No. 66 of 1991 prohibits the establishment or continued activity of any political party or organization which has a regional, tribal, factional, class or occupational basis, or which discriminates among citizens on grounds of sex, origin or colour, or which opposes religion or stigmatises other political parties or organizations or society and its individual members as heretical, or which claims to represent religion, patriotism, nationalism or revolutionary ideals.

131. Under the same article, parties and organizations are also forbidden to turn to the use of any form of violence or to threaten or incite violence during the course of their activities, and to include in their political programmes or publications anything which incites or advocates violence.

XXI. ARTICLE 21 OF THE COVENANT

132. Article 58 of the Constitution stipulates that: "Citizens throughout the Republic shall have the right to organize themselves politically and professionally and in trade unions, and to form scientific, cultural, social and national organizations and federations which serve the aims of the Constitution, provided that such organization does not contravene the provisions of the Constitution. The State shall guarantee this right, adopt all the measures needed to enable citizens to exercise it, and safeguard all the freedoms of political, trade-union, cultural, scientific and social institutions and organizations." Article 5 of the Constitution also stipulates that: "The political system of the Republic of Yemen is based on political and partisan pluralism with a view to the peaceful changeover of power. The rules and procedures in connection with the formation of political organizations and parties and the exercise of political activity are regulated by law ...". The Political Parties and Organizations Act No. 6 of 1991 contains various provisions which guarantee the right of peaceful assembly and the formation of political organizations, among them article 3, which stipulates that: "In accordance with the provisions of the Constitution of the Republic of Yemen, public freedoms, including political and party pluralism based on constitutional legitimacy, are regarded as ... a cornerstone of the political and social system and may not be abolished or restricted ..."

Article 5 of the Political Parties and Organizations Act stipulates that citizens shall have "the right to voluntary affiliation with any political party or organization in accordance with the Constitution and the provisions of this Act."

XXII. ARTICLE 22 OF THE COVENANT

Paragraph 1

133. Under article 1 of Legislative Decree No. 11 of 1963 concerning the regulations and provisions governing the activity of associations, an association is defined as follows: "For

purposes of the application of the provisions of this Act, any non-profit-making group which is regularly organized for a specified or unspecified period and which is composed of individuals or bodies corporate shall be regarded as an association."

Paragraph 2

134. The aforesaid Legislative Decree imposes no restrictions whatsoever on the right to establish or form associations, except in the cases specified in article 2, such as the illegitimacy of the purpose for which they are established if they are likely to prejudice the country's integrity or political system or if they are established in a manner contrary to the provisions of the laws in force or to public morals, which is a principle recognized in modern-day legislative enactments with the aim of protecting associations and ensuring the legitimacy of their activity and the purposes for which they were established.

Paragraph 3

135. Articles 151 and 152 of Republican Decree No. 5 of 1995 guarantees the right to establish trade-union organizations. Article 151 stipulates as follows:

> "Workers and employers shall have the right to form their own organizations and join them of their own accord, the purpose being that such organizations should take care of their interests, defend their rights and represent them in bodies and councils and at conferences, as well as in regard to all matters of relevance to them.
>
> "Workers' trade unions and employers' organizations shall have the right to pursue their activity in full freedom without interference in or the exercise of influence on their affairs."

136. Article 152 also stipulates that: "Subject to the provisions of article 35 of this Act, neither the penalty of dismissal nor any other penalty may be applied in respect of workers' representatives in trade-union committees owing to their pursuit of their activity in accordance with this Act and the Penal Code and the implementing rules and regulations of each." Yemeni legislative enactments also guarantee that workers and employers have the right to establish trade-union organizations to look after their affairs and protect their interests. They also guarantee them freedom in the exercise of their activity and prohibit their dismissal or the adoption of any punitive measures against them owing to the pursuit of their activity. Article 134 likewise guarantees that every worker or employee having attained the age of 16 has the right to join an occupational or professional trade union, and the right to withdraw therefrom whenever he so wishes, without restriction or condition. The remaining articles in the same section stipulate the right of every general trade union to establish a trade-union branch in towns and to form trade-union committees in each enterprise or labour establishment affiliated to it.

137. There are, in fact, over 2,000 associations and dozens of occupational trade unions for workers, teachers, engineers, doctors, lawyers, journalists and members of other occupational groups in Yemen.

XXIII. ARTICLE 23 OF THE COVENANT

Paragraph 1

138. The Constitution of the Republic of Yemen regards the family as the cornerstone of society that is rooted in religion, morality and patriotism. Accordingly, article 26 of the Constitution states that "the family is the basis of society ..." and stresses the importance of preserving the family entity and strengthening its ties. The welfare of the family is regarded as crucial in the approach adopted by the social policy of the Yemeni Government, which therefore established a social security network, the aims of which include ensuring the welfare of families and preserving the cohesion and continuity of the family.

Paragraph 2

139. The Personal Status Act No. 20 of 1992, as amended, recognizes the right of men and women to marry and found a family. Article 6 of the Act stipulates that: "Marriage is a relationship between two spouses according to the terms of a legal contract under which the woman becomes lawfully accessible to the man. Its purpose is to cement divides and ensure the foundation of a family on the basis of good conjugal relations." The said Act, as amended, also contains stipulations and provisions regulating the contract of marriage, the impediments to marriage, the rights and duties of spouses, the nurture and custody of young persons and other family-related matters.

Paragraph 3

140. The above-mentioned Act clarifies the question of the marriage contract in the sense that no contract is based on the coercion of either party thereto. Article 10 stipulates that: "Any contract based on coercion of either of the spouses is null and void unless it is thereafter renewed by mutual consent." Article 15 stipulates that: "No one is permitted to enter into marriage with a young male or female person under 15 years of age." Article 18, paragraph 2, also stipulates that: "If a woman's guardian prevents her from marrying, the judge shall order him to give her in marriage and, if he refuses to do so, the judge shall order the next guardian in line to do so and so on down the line. If the guardians fail in their task or prevent the marriage (refuse to give the woman in marriage), the judge shall do so, at the bride-price normally received by her peers, to a man whose social standing is commensurate with her own." Article 19 stipulates that: "The guardian shall be deemed to have prevented a marriage if he refuses to give in marriage an adult woman of sound mind who is willing to marry a man whose social standing is commensurate with her own". Article 23 stipulates that: "The woman must give her consent. In the case of a virgin, this shall be signified by her silence and, in the case of a woman who is not a virgin, by her verbal assent."

Paragraph 4

141. The mutual rights and obligations of the spouses during their marriage are set forth in articles 40 and 41 of the above-mentioned Act, as amended:

Article 40 of the amended Act: "A husband has a right to his wife's obedience in matters affecting the family's interests, particularly with regard to the following:

> "She must move with him to the conjugal home, unless she stipulated in the contract that he must allow her to remain in her home or her family's home, in which case she must permit him to live with her and enjoy access to her;
>
> "She must permit him to have licit intercourse with her, in private, when she is in a state of ritual purity;
>
> "She must obey his orders without obstinacy and perform her work in the conjugal home, like other women;
>
> "She must not leave the conjugal home without his permission or other than for a legally valid or generally acceptable reason which is not prejudicial to honour or to her duties towards him. In particular, she may go out to attend to her property interests or discharge her employment-related duties. If the woman wishes to assist her aged parents when there is no one else to take care of either or both of them, this shall be deemed to be a legally valid reason."

142. Under article 41, the obligations of the husband towards his wife are as follows:

- He must provide a legally adequate dwelling of an appropriate standard for both of them;
- He must provide maintenance and clothing;
- If the husband has more than one wife, he must treat them all equitably;
- He must not interfere with her private property;
- He must not cause her any material or moral harm.

143. With regard to the reciprocal rights of the spouses in the event of a dissolution of their marriage, Yemeni law to a certain extent gives precedence to the woman's rights on numerous social and moral grounds. Those rights include the right to compensation in accordance with the provisions of article 71 of the above-mentioned Act, which stipulates that: "If a man divorces his wife in a manner which, in the judge's opinion, is arbitrary, without reasonable justification and likely to leave her in a state of distress and destitution, the judge may order the husband to pay her compensation, depending on his circumstances and the arbitrariness of his act, up to an amount equivalent to one year's maintenance for women of her social standing, in addition to the maintenance payable during the waiting period that she must observe before remarrying. This compensation shall be payable, at the judge's discretion, either as a lump sum or in monthly instalments, as the circumstances require."

144. With regard to the rights of the children on dissolution of marriage, the law guarantees the right of custody, which article 138 of the Personal Status Act defines as follows: "Custody

means the care and upbringing of a young person who is unable to manage his or her own affairs, and protection of the said young person from harm or danger, in a manner consistent with the rights of his or her guardian. It is an inalienable right of the child which, if precluded by any particular circumstances, is nevertheless restored when those circumstances change." Subject to the provisions of article 148 set forth below, article 139 of the amended Act stipulates that: "The duration of custody is nine years in the case of a boy and 12 years in the case of a girl, unless the judge decides otherwise in the interests of the child." Article 141 also stipulates that: "The mother has a greater right to custody of her child, provided that she is found fit to undertake that custody, and she cannot forfeit this right unless the child accepts another person, failing which she is obliged to undertake custody of her child, such being the child's right ..."

145. Article 148 stipulates that: "When a male or female child becomes more self-reliant, the child shall be given a choice between his or her father or mother, in the event of a dispute between the latter, with a view to safeguarding the child's interests. In the event of a dispute between guardians other than the father and mother, the judge shall choose the person most likely to further the child's interests, after ascertaining the child's views in this connection."

XXIV. ARTICLE 24 OF THE COVENANT

Paragraph 1

146. With regard to the rights of children in general vis-à-vis their families and society, the Government of the Republic of Yemen is showing due concern for this aspect. The Government has endeavoured to create a suitable environment and conditions for the development of a modern Yemeni society imbued with a spirit of solidarity, in which all persons enjoy all their rights and freedoms on an equal footing, through the adoption of numerous legislative measures that have been promulgated to protect children and ensure their upbringing and education and the development of their talents and capabilities at the various stages of their growth. Such measures include those set out below.

147. Every child has a right to be nurtured, cared for and maintained by his or her parents and other relatives. Reference has already been made to numerous provisions of the Personal Status Act, as amended, concerning nurture and custody. Article 149 of the above-mentioned Act defines maintenance as the food, clothing, shelter and medical treatment, etc., which a person has a financial obligation to supply to another person for a specific reason or by virtue of a specific family relationship. Article 158 stipulates that the obligation to maintain a destitute or mentally ill young child is borne by the father, or the most closely related ascendant, provided that he is financially solvent or, if destitute, capable of earning a living. If the father or other ascendant is destitute and unable to earn a living, the maintenance obligation is borne by the mother, provided that she is financially solvent, or by other relatives.

148. The right to education is a public right guaranteed to all individuals under the terms of article 54 of the Constitution, which stipulates that: "All citizens have a right to education, which the State shall provide in accordance with the law through the establishment of various schools and cultural and educational institutions. In particular, the State shall cater for the

welfare of the younger generation, protect it from delinquency, ensure its religious, intellectual and physical upbringing and ensure appropriate conditions for the development of its talents in all fields."

149. Every child has a guaranteed right to enjoy the social, educational, health, recreational and other services provided by the State. Orphan children who are indigent, disabled or without a family provider have a right to care, upbringing and training, which the State safeguards through the establishment of institutions in which they can find shelter. The State has also established social welfare institutions for the care and rehabilitation of juvenile delinquents or potential delinquents and is providing the resources and financial appropriations needed for the administration and operation of these social facilities (under the Social Security and Juveniles Acts).

150. With a view to child welfare and protection, the State adopted a variety of practical legislative measures, including:

- Special measures for the protection and welfare of children (the Juveniles Act);
- Maternal and child protection measures through the establishment of health facilities and specialist amenities;
- The provision of social benefits (in order to ensure family protection and child upbringing);
- The introduction of restrictions on child employment;
- Education access, care and social integration for disabled persons.

Paragraph 2

151. At birth, every child has the right to be entered in the civil status register. The child's right to be given a name by which he or she will be known is also guaranteed by law in accordance with the provisions of Legislative Decree No. 23 of 1991 concerning civil status and civil registration. Articles 20 and 21 of section IV of that Act regulate the registration of births and stipulate that the child's father, any adult relative or the director of the hospital, maternity clinic or other institution in which the birth takes place must notify the birth to the nearest civil registry within 60 days. The notification must state the hour, day, date and place of birth, the nationality of the child, his name and family name, as well as the family name, nationality and religion of each parent. The child is also issued with a birth certificate, which serves the same function as a certificate of registration for purposes of nationality. In addition, the above information must be entered in the official registers at the Department of Civil Status. The law specifies that the child must bear his own name and the name and family name of his father. It goes without saying that the 60-day time-limit specified in article 20 for the notification of the birth is regarded, from the legal standpoint, as a statutory time-limit the expiration of which does not entail forfeiture of the child's right to subsequent registration. In fact, this right is not extinguished and can be legally enforced at any time in accordance with an explicit provision contained in article 30 of the above-mentioned Legislative Decree No. 23.

Paragraph 3

152. Yemeni law respects the right of every child to hold a nationality. Due regard for this humanitarian aspect is shown in article 44 of the Constitution, which stipulates that:

> "Yemeni nationality shall be regulated by law. No Yemeni shall be deprived of his nationality under any circumstances whatsoever, nor shall it be withdrawn from a person who has acquired it except as provided by law."

Article 3 of the Yemeni Nationality Act No. 6 of 1990 also stipulates that:

> "Yemeni nationality shall be enjoyed by:
>
> > "Any person born to a father holding this nationality;
> >
> > "Any person born in Yemen to a mother holding this nationality and a father who is stateless or of unknown nationality;
> >
> > "Any person born in Yemen to a mother holding this nationality and a father whose paternity has not been legally established;
> >
> > "Any person born in Yemen to unknown parents. A foundling discovered in Yemen shall be deemed to have been born there failing proof to the contrary;
> >
> > "Any emigrant who legally held this nationality at the time of his departure from the national territory and who has not legally relinquished this nationality at his explicit request, even if he has acquired the nationality of the country in which he resides in accordance with its laws."

153. The Nationality Act is currently under review with the aim of improving some of its articles and bringing it more into line with the legislative and practical developments currently under way in Yemen and those to which it aspires in the future.

XXV. ARTICLE 25 OF THE COVENANT

154. The principle of participation in Yemen is a basic principle of the legislative enactments and laws, which accord to all Yemenis the right to participate in public affairs by various means.

Paragraph (a)

155. The above is affirmed in article 4 of the Constitution, which stipulates that: "The people are the source and holder of authority, which they exercise directly, through referendums and public elections, and indirectly through the legislative, executive and judicial bodies and the elected local councils."

Paragraph (b)

156. Article 3 of the General Electoral Act stipulates that every citizen who has reached the age of 18 Gregorian years shall enjoy the right to vote and that this does not apply to naturalized persons who have not held Yemeni nationality for the full legal period specified in the Nationality Act. Article 4 of the General Electoral Act also stipulates that: "Every voter shall personally exercise his voting rights in the electoral constituency in which his place of residence is situated." The Act states that voters must designate the place of residence in which they wish to exercise their voting rights. A voter may not cast his vote more than once during a single election. Article 51 of the General Electoral Act states that: "Every citizen whose name is entered on the electoral list in the constituency in which he is resident for electoral purposes shall have the right to stand as a candidate therein, provided that he meets the following conditions:

> "He must be a Yemeni citizen;
>
> "He must be at least 25 years of age;
>
> "He must be literate;
>
> "He must be of good conduct and moral standing and safeguard religious rites and must have no convictions for an offence entailing breach of honour unless he has been rehabilitated and he must not be involved in smuggling or prohibited items."

157. Two series of legislative elections have been held since 1990; the first took place on 27 April 1993 and the second on 27 April 1997. The first direct elections for the presidency of the Republic were held in 1999 and had a strong turnout. On 20 February 2001, a referendum on constitutional amendments was held in conjunction with local elections in a move by the State to decentralize, give more authority to local councils and increase their decision-making capacity.

Paragraph (c)

158. Article 12, paragraph (c), of the Civil Service Act No. 19 of 1991 stipulates that: "The Civil Service shall be staffed in accordance with the principle of equality of opportunity and equal rights for all citizens, without any discrimination. The State shall ensure that the application of this principle is monitored." Unelected positions are accessible to all citizens in accordance with their qualifications, skills and practical abilities and there are no legal restrictions to preclude any citizen from applying for any position appropriate to his practical qualifications. The composition of the State and the workers in its agencies reflect this principle.

XXVI. ARTICLE 26 OF THE COVENANT

159. Yemen is a party to the International Convention on the Elimination of All Forms of Racial Discrimination. No racist practices take place in Yemen and equality before the law is guaranteed under article 41 of the Constitution, the text of which is reproduced as part of the information provided in respect of article 2 of the Covenant. The State provides citizens with every means of care in all areas of life on the basis of its resources, without distinction or

discrimination. The legislative enactments and laws in Yemen devote attention to free compulsory basic education, as well as to the other stages of education; the former is free of charge and accessible to all citizens, without distinction. In regard to employment, there are no laws which distinguish between citizens in the performance of work, in which connection reference may be made to the information provided in this report in respect of article 2 of the Covenant.

XXVII. ARTICLE 27 OF THE COVENANT

160. In Yemen, no person is denied the right to enjoy his own culture, practice his own religious ceremonies or use his own language. Yemenis are adherents of the Islamic faith and their official language is Arabic. There is, however, a Jewish minority in Yemen that retains its own religion, language and culture. The members of this minority are not denied enjoyment of the right referred to in this article, since they are Yemeni citizens for whom that right is guaranteed by the Constitution. Non-Muslim aliens resident in Yemen may also practice their religious ceremonies in places which they themselves designate for such purpose or in the places of worship of which the establishment has been authorized. Under the Constitution, they are guaranteed rights equal with those guaranteed to Yemenis.

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